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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/396,888	09/16/1999	VICTOR A. RIVAS		8050

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EXAMINER

GRIER, LAURA A

ART UNIT PAPER NUMBER

2615

DATE MAILED: 06/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/396,888

Applicant(s)

RIVAS ET AL.

Examiner

Laura A. Grier

Art Unit

2615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-4, 6-27 and 29-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11-15, 17-27 and 29 is/are allowed.
- 6) ☒ Claim(s) 2-4, 6-10, 16 and 30-37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)          |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. <u>05/19/06</u> .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____.  | 6) <input type="checkbox"/> Other: _____.                                   |

**DETAILED ACTION**

In view of the Appeal Brief filed on 3/8/06, PROSECUTION IS HEREBY REOPENED.


A non-final Office action is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

  
VIVIAN CHIN  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600

The indicated allowability of claims 7 (dependent claims 2-4, 8-10) and 16 is withdrawn in view of the 112 rejections.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 7 (dependent claims 2-4, 8-10), 16, and 31 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification has support for a plurality of photosensors and light emitting diodes on a plane, however, the specification fails to disclose a plurality of photosensors positioned in a plane offset from the plane of the light emitting diodes. According to the drawings of the glasses illustrating the photosensors and the light emitting diodes, the photosensors and light emitting diodes are positioned on the same plane, not positioned in offset planes from each other. If the specification provides efficient support of the claimed position of the photosensors and light emitting diodes, then the drawings should disclose the same details as disclosed in the specification and claimed in the claim.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 7 (dependent claims 2-4, 8-10), 16, and 31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 7, 16 and 31, if the applicant has no support in the specification of, "a plurality of photosensors positioned in a plane offset from the plane of the light emitting diodes", then the claim language, "a plurality of photosensors positioned in a plane offset from the plane of the light emitting diodes" is a misrepresentation or misdescription of the position of the photosensors and light emitting diodes on a plane (see figure 1). Thus, the claim language is indefinite.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 30, 31 and 37 are rejected under 35 U.S.C. 102(e) as being anticipated by Fukushima et al., U. S. Patent No. 6123661.

Regarding claim 30, Fukushima et al., (herein, Fukushima) discloses a pair of eyeglasses (display device –14) that include a plurality of infrared LEDs and photosensors (14f/14g – col. 5, lines 12-15 and figure 1), which reads on a pair of glasses, a plurality of light emitting diodes, and a plurality of photosensors, and the electrical circuitry is inherent as evident by the function of the eyeglasses in respect to the function of the LEDs and sensors and a power source (col. 6, lines 12-15).

Regarding claim 37, Fukushima et al., (herein, Fukushima) discloses a pair of eyeglasses (display device –14) that include a plurality of infrared LEDs and photosensors (14f/14g – col. 5, lines 12-15 and figure 1), which reads on a pair of glasses, a plurality of light emitting diodes, and a plurality of photosensors, and the electrical circuitry is inherent as evident by the function of the eyeglasses in respect to the function of the LEDs and sensors and a power source (col. 6, lines 12-15), and Fukushima further disclose the determining changes in the amount of reflected light received by the photosensors, wherein a user pulse rate is determined (col. 8, lines 52-67, and col. 9, lines 1-4).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claims 32** are rejected under 35 U.S.C. 103(a) as being unpatentable over Fukushima view of Piosenka et al., U. S. Patent No., 5359444.

Regarding claim 32, Fukushima discloses everything claimed as applied above (see claim 30). Fukushima obviously discloses a form of signal transmission from the glasses to the controller 12 via the photosensor signal processing section (26 – figure 1). However, Fukushima fails to disclose the eyeglasses having a transmitter coupled thereto to correspond with a remote receiver.

Regarding the transmitter, Piosenka et al, discloses a pair of eyeglasses with a transmitter (65) which is used with a receiver and computer (col. 5, lines 10-56).

It would have been obvious to one of the ordinary skill in the art at the time the invention was made to modify the invention of Fukushima by implementing a transmitter for the purpose of improving the use glasses for transmitting data relating the person's body functions.

5. **Claims 33-34 and 36** are rejected under 35 U.S.C. 103(a) as being unpatentable over Fukushima view of Ryll.

Regarding **claim 33-34**, Fukushima discloses everything claimed as applied above (see claim 30). Fukushima eyeglasses consist of a display. However, Fukushima's display fails to provide the sensed condition of the user.

Ryll disclose a pair of sport goggles that provides real time body monitoring information to user, wherein the information includes the heart rate of the user, which constitutes as a pair of eyeglasses for monitoring heart conditions (figure 1 and abstract). Ryll discloses display (48) in respect to figure 8 that provides a display which may be used in sports goggles for indicated a sensed condition, including a numerical display of the user's heart rate and pulse (col. 6, lines 61-67 and col. 7, lines 1-41).

Thus, it would have been obvious to one of the ordinary skill in the art at the time the invention was made to modify the invention of Fukushima by providing a display the capabilities of display sensed results to the user for the enabling user to be aware of body functions.

Regarding **claim 36**, Fukushima discloses everything claimed as applied above (see claim 30). Fukushima eyeglasses consist of a power source. However, Fukushima fails to provide the power supply as a battery or solar cells.

Ryll further discloses a battery (42), which constitutes a power supply. Thus, it would have been obvious to one of the ordinary skill in the art at the time the invention was made to modify the invention of Fukushima by providing a battery for supplying adequate power to the glasses, wherein batteries are commonly known and used source of power supply.

6. **Claim 35** rejected under 35 U.S.C. 103(a) as being unpatentable over Fukushima view of Mathews.

Fukushima discloses everything claimed as applied above (see claim 30). Fukushima eyeglasses fail to disclose on button for user input information.

Regarding the button for user input information, Mathews further discloses mean of inputting preset data of the user to be used for comparing the sensed condition (col. 4, lines 4-54).

It would have been obvious to one of the ordinary skill in the art at the time the invention was made to modify the invention of Fukushima by providing a means of inputting preset data of the user to be used for comparing the sensed condition, providing optimal monitoring techniques of the user's body functions.

***Allowable Subject Matter***

7. **Claims 11-15, 17-27, and 29** are allowed.

The following is a statement of reasons for the indication of allowable subject matter:

Regarding **claim 11**, the prior art of record is drawn to a pair of eyeglasses for monitoring or sensing body functions, in particular to heart rate and pulse rate, consisting of light emitting



diodes, photosensors, electronic circuitry, and a power source. However, the prior art fails to disclose the structure and components functionally coupled to the glasses, therein as claimed nor the motivation to combine.

Regarding **claim 22**, the prior art of record is drawn to a pair of eyeglasses for monitoring or sensing body functions, in particular to heart rate or pulse rate, consisting of light emitting diodes, photosensors, electronic circuitry, and a power source. However, the prior art fails to disclose the structure and components functionally coupled to the glasses, therein as claimed nor the motivation to combine.

### *Response to Arguments*

Applicant's arguments filed 3/8/06 have been fully considered but they are not persuasive.

The applicant argument are essentially directed to the prior art reference, Fukushima et al., not teaching a heart monitoring apparatus. The limitation of the heart monitoring apparatus is recited in the preamble of the claim. The explicit language of a heart monitoring apparatus is not recited in the claim language of independent claims 30 and 37. The claim language of claim 37, merely recites emitting light onto a surface of user, wherein the term "surface" provides for a broad interpretation. The claims language of the claim have been examined and rejected in respect to the broadest interpretation. Fukushima is not exclusively limited to a heart monitor apparatus, but, the Fukushima reference does provide support and teachings of heart rate calculations and/or monitoring, pulse rate monitoring (col. 5, lines 6-11, col. 8, lines 52-67-col. 9, lines 1-7), which is synonymous to heart rate. And in respect the claim language, Fukushima

anticipated the claimed inventions (figure 1), with a pair of glasses (display device –14) with a plurality of photosensors, LEDs, inherent electronic circuitry as evident of the function of the display device, and a power source (col. 6, line 13), therein as claimed (claim 30); and claim 37 further includes a change in the light emission of the LED in respect to the change of user's condition, all indicated in the above office action (col. 8, lines 52-67, and col. 9, lines 1-4).

Regarding the argument of the dependent claims, for claim 32, figure 1 provides obvious support of a transmission means to a remote device, however, a new reference of prior art (Piosenka – col. 5, lines 10-56) has been provided to clearly indicate that it was well known in the art for a pair glasses to include a transmitter that transmit human data information to a remote device. Other dependent claims (33-36) are rejected under obviousness, wherein the claimed limitation are supported in a similar art teachings or common knowledge/awareness, and would have been obvious to one of ordinary to modify the teachings offered by Fukushima. In respect to claim 33 and claim 34, the applicant argues that Fukushima does not indicate a sense condition to the user, the examiner indicates in the rejection that Fukushima fails to disclose the limitation, and introduces another reference Ryll, which includes related context, and provides support for claimed limitation (col. 6, lines 61-67 and 7, lines 1-41). The two reference a relevant reference because both are directed to monitoring a persons body functions. Regarding claim 36, the applicant argues Fukushima/Ryll not disclosing a power source consisting of a batteries or solar cells, and combinations thereof, and no motivation to combine. As indicated in the office, Fukushima does not disclose the type of power source. The use of various types of power sources are well known and are used in various same size devices, thus making obvious to one of the ordinary skill to modify Fukushima. Regarding claim 35, the applicant argues

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Mathews, which is used to modify Fukushima to implement a button to enter user's information on the glasses has nothing to do with Fukushima and provide no motivation to combine.

Mathew was introduced to provide known teachings of the claim limitation (col. 4, lines 4-54).

### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura A. Grier whose telephone number is (571) 272-7518. The examiner can normally be reached on Monday - Friday, 7:30 am - 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vivian Chin can be reached on (571) 272-7848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Laura A Grier  
Primary Examiner  
Art Unit 2615

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